No. 628

FILED
OCT 17 1967
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

TEXACO INC., PAN AMERICAN PETROLEUM CORPORATION AND GULF OIL CORPORATION, PETITIONERS

v.

FEDERAL POWER COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

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The instant petition (a conditional cross-petition) presents the same issue—the power of the Commission to require refunds under temporary certificates which do not contain specific refund conditions—as that presented by other producers in the petitions in Nos. 504 and 526, this Term, which challenge the identical court of appeals decision, rendered on May 24, 1967. The instant petition, however, was not filed until September 16, 1967, more than 90 days after the entry of the judgment below, and no exten-

sion of time was sought within the 90-day period. Section 2101(c) of the Judicial Code, 28 U.S.C. 2101 (c), provides that a petition for certiorari in a civil case must be filed "within ninety days after the entry of [the] judgment or decree," unless the time is extended within the 90-day period by the order of a Justice of this Court. This limitation is, of course, jurisdictional. As we have explained in our memorandum in No. 82, this Term, there is no exception for conditional petitions.

However, since the instant petitioners were parties below, they are parties here (Rule 21(6), Rules of this Court, effective October 2, 1967), and, as such, are entitled to participate in support of the petitions of other producers which raise the refund issue and to enjoy the benefit of any judgment they may obtain. In our memorandum in Nos. 504, 520 and 526—the other petitions which relate to the court of appeals decision challenged here—we have suggested that these petitions be held to abide the Court's final dispositon of the petitions in Nos. 60-62, 80, 97 (certiorari granted, October 9, 1967) and 503.

Respectfully submitted.

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October 1967.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 279047 313